



Key Action Steps to Improve Women’s Access to Justice: Unpacking Thailand’s International Human Rights Obligations

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ICJ: the rule of law and human rights

It is a pleasure to meet once again Angkhana Neelapaijit, for whom I have the greatest admiration; it is wonderful to be associated with her and the JPF in this project.

I congratulate all involved in preparing this report, which presents a comprehensive overview of the obstacles impeding women’s access to justice, and a well thought out framework of solutions, drawn up with reference to the international standards, and designed to meet the actual circumstances of this country.

The International Commission of Jurists, which I represent today, stands for human rights and the rule of law. These are inseparable concepts. Human rights, including equality rights and freedom from discrimination, can be enjoyed fully only where the rule of law is respected and where there is unimpeded access to justice wherever rights are threatened or violated.

The ICJ has contributed to this Report as part of its Women’s Human Rights Project, which began in 2009. The project’s aims are to combat impunity, increase legal accountability and improve access to justice for violations of women’s human rights.

Legal framework is central to equality for women

Constitutional provisions may not be effective to provide protection

The message that I bring today is that the recommendations in this Report must be accepted and acted on if Thailand is to fully implement its human rights obligations.

Thailand has already shown its commitment to human rights and women's equality rights by ratifying CEDAW, the Women's Convention, together with its Optional Protocol, and by ratifying all the major human rights instruments, CESC, CERD, CAT, CRC, CRPD.

However, ratification is only one step in the process of giving effect to rights. To make human rights effective, they have to be incorporated into the legal system of the State.

The Thai Constitution makes generous provision for equality rights, equal protection of the law, equality before the law and the prohibition of discrimination. Also included are equal access to justice, the protection of women in legal processes and provisions to ensure the protection of women against violence.

Such constitutional provisions go part of the way towards meeting the State's obligations under instruments such as the Convention on the Elimination of Discrimination Against Women. But they do not of themselves change anything. They do not automatically repeal inconsistent laws. They do not necessarily define discrimination consistently with the Convention. They do not specify the sanctions or other remedies which should apply in where discrimination occurs contrary to the Constitution. They are insufficient in themselves to provide protection to people who have suffered discrimination at the hands of government agencies or by private individuals.

CEDAW provides not only that discrimination by any other person or agency should be prohibited, but also that sanctions should be provided for. For that it is necessary to have laws specifying penalties and remedies, and providing readily accessible procedures to enforce the prohibition.

Legislative framework is needed

The CEDAW Committee has emphasised frequently the need for effective national legislation to give effect to the Convention, backed up by machinery. Most countries have found it necessary to establish a legislative framework, clearly defining discrimination, the scope of the obligations of public and private agencies, the remedies available where rights have been violated and the procedures which can be followed.

Specific legislation is the most effective way to ensure that the law reflects and gives full effect to international human rights standards, and that it provides effective and enforceable rights and remedies.

A preliminary task of such legislation is to ensure the repeal of all laws in force which discriminate against women, for example, those dealing with nationality.

Beyond that, national legislation should prohibit discrimination in all its forms, and in all areas of activity, whether it is perpetrated by State agencies or by individuals or bodies in the private sector. This prohibition is mandated by CEDAW, and it needs to be backed up by accountability measures, including sanctions.

Anti-discrimination legislation should define discrimination in a way which complies with CEDAW by incorporating both direct and indirect discrimination. (Indirect discrimination occurs, eg, when unreasonable conditions are imposed which are more favourable or unfavourable to persons of a particular sex, race, etc). Clear definitions make for greater certainty for all concerned, and this, in turn, facilitates the enforcement of rights.

Constitutional provisions may specify, and therefore limit, the grounds of prohibited discrimination. These grounds may fall short of international standards, which require discrimination on any grounds to be prohibited. Further legislation is needed to ensure that all discrimination on any gender based ground is prohibited. In addition to including a general prohibition of discrimination, legislation should specify particular grounds not covered by the Constitution, for example, the grounds of marital status, sexual orientation, gender identity, pregnancy, etc.

Legislation should also prohibit discrimination on multiple grounds. For example, women may experience discrimination both on gender grounds and because of

ethnicity and/or religion. Marginalised groups often experience this form of intersectional discrimination. One of the most important recommendations in today's report calls for this form of discrimination to be covered by legislation. It should be emphasised that human rights are the entitlement of every person within the jurisdiction of the State, regardless of nationality.

Effective remedies must be provided where state or private person discriminates

The objective of the legislative prohibition of discrimination is partly to encourage changes in behaviour, for example, on the part of employers and other agencies. To be effective in this, the perpetrators of discrimination must be held to account by sanctions and effective remedies. International human rights instruments require States to provide to those whose rights have been violated an effective remedy.

Access to justice is, of course, a key factor in making rights effective through enforcement. The provisions in the Thai constitution guaranteeing easy, comfortable, quick and indiscriminate access to justice, express excellent intentions, but they need to be carried forward by specific legislative measures of implementation, establishing processes which make it possible in practice for the individual to enforce rights or penalties, to hold those responsible accountable, and to claim compensation or other redress.

Such measures should be in accordance with the Women's Convention, which calls for recourse to tribunals, courts or other bodies to provide effective protection through sanctions or other measures. All procedures should be affordable, and there should be easy access to legal services for all. Other barriers to justice, such as language should be overcome. The procedures should be both prompt and effective. States parties should financially support NGOs, independent associations and centres providing legal resources for women in their work of educating women about their rights to equality and assisting them to pursue remedies for discrimination.

The sanctions called for by the treaty bodies for violations of rights, include penalties, administrative measures and/or remedies, such as compensation,

reparation or other remedial action. CEDAW has specified a wide range of sanctions and different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.

The remedies must be both adequate and enforceable. Otherwise, the rights which exist on paper, may be of little use to the individual.

In some situations mediation may be considered appropriate, but this is not always the case in situations where a woman may experience undue emotional pressure. Where a woman's right to life or physical integrity has been abused, as in cases of domestic and other forms of violence, CEDAW has made it clear that criminal proceedings should be initiated by the authorities, and appropriate penal sanctions imposed.

This report reflects international standards, by insisting that access to justice requires the right to an effective, accessible and prompt legal remedy for the violation or abuse of rights, . . . and the ability to claim rights as legal entitlement and to seek accountability of transgressors, protection of the law, and meaningful redress. This should be accepted as the basis for reform.

Gender Equality Bill

CEDAW has encouraged Thailand to adopt appropriate legislative and other measures to prohibit discrimination against women, and to impose sanctions where appropriate.

I am encouraged to learn that Gender Equality legislation is now under active consideration in Thailand, though I am alarmed to learn that there may be exemptions from the law where reasons of academic, religious or public need are advanced. Exemptions of this kind are not compatible with Thailand's obligations under the Women's Convention; they go far beyond what is acceptable.

Furthermore, I understand that there is no provision for reparation for victims, and that very low penalties have been provided.

I urge that the legislation be brought forward as soon as possible, and that the recommendations in the Report be accepted, in order to ensure full compliance with Thailand's obligations under CEDAW and other international Covenants and Conventions.

Machinery is needed to make access to justice easier

In order to achieve the aim of anti-discrimination legislation to bring about extensive change at all levels of civil society, it needs to be backed up by appropriate institutions - referred to by CEDAW as national machinery - with the task of co-ordinating and overseeing implementation of the new law.

Each country may approach this in its own manner, but essentially there is a need, first, for a well resourced agency within the government administration to ensure that each branch of government meets its obligations to achieve the objects of the legislation. Such an agency can collect data to assess the whether policies and programs are having the desired effect, and can develop further policies, such as special measures, where needed.

There is also a need for an independent agency, such as a human rights commission or women's commission to promote observance of equality rights throughout the community. Such an institution should engage the private sector and ensure that education and training are provided where needed to overcome attitudes and prejudices which contribute to the continuation of discrimination in fields such as employment and education.

Such an agency should also set up programs to ensure that women are properly informed about their rights and the procedures open to them to deal with violations of those rights. The media could be given a role in this. The agency should also provide support to women who want to access remedial measures or compensation directly or through NGOs.

Regrettably, in Thailand, as in some other countries, the persistence of outmoded attitudes can engender in women such a fear and mistrust of the authorities that they are inhibited from seeking remedies for violation of their rights. Education and training for lawyers, judges and law enforcement officers about the international standards and of the obligations to overcome discrimination is needed to ensure that women are not intimidated from pursuing their rights. CEDAW has called for codes

of conduct for public officials to ensure respect for the principles of equality and non-discrimination.

In this connection it can be noted that CEDAW expressed concern that the Thai machinery for the advancement of women, the Office of Women's Affairs and Family Development, might not have sufficient authority to carry out its functions. The recommendations in this Report, if implemented, would go a long way to meeting these concerns.

The Optional Protocol

Another task for an independent agency could be to better inform the community, and in particular the legal profession and women's organizations, about the Optional Protocol to the Women's Convention. Under the Protocol, which Thailand has ratified, complaints can be made to the CEDAW Committee where there is alleged to be a violation of rights and where no remedy has been forthcoming for the victim under domestic law.

CEDAW was concerned that very few cases had proceeded in Thai domestic jurisdiction under the constitutional guarantee, and it wanted to encourage women to have recourse to the complaints procedure under the Convention and the Optional Protocol. While the procedures are not costly in themselves, it is important for lawyers and others dealing with discrimination issues to understand how the system operates and to have sufficient information about the use of the Protocol and about such significant issues as the exhaustion of domestic remedies.

This is something that an independent agency established to ensure implementation of women's rights could promote.

Violence and legal protection

In no area are the measures I have outlined more necessary than in the case of violence against women, which has long been defined by CEDAW as a form of discrimination against women. Violence against women, has a devastating effect on the well-being of many thousands of women, and seriously inhibits their ability to enjoy their rights and freedoms in full equality.

The Thai Constitution makes specific provision for the protection of women against violence.

However, CEDAW foresaw that the proposed Thai legislation [Domestic Violence Victim Protection Act 2007] might fall short of the degree of protection necessary to comply with international standards, because of its focus on reconciliation and family unity. Those concerns have been born out in practice, experience suggesting that few incidents reach the courts. Instead of the justice system providing protection for women, it exposes them to the risk of **further violence**. Both CEDAW and the Human Rights Committee have regretted the high prevalence of violence against women in Thailand, and have called on Thailand to adopt comprehensive measures to improve the legal protection of women and girls. To overcome the attitude of those in positions of authority that domestic violence is a family affair, not a matter of public concern both CEDAW and the Human Rights Committee have recommended education and training for the judiciary, law enforcement officials, and in particular police officers, and health service providers.

The treaty bodies have also recommended to Thailand that it should establish crisis-centre hotlines and victim support centres equipped with medical, psychological and legal support, including shelters.

Legal, penal provisions

Above all, CEDAW has insisted that violence against women must be dealt with as the crime that it is, and that perpetrators must be prosecuted and punished, and where necessary restrained by law from contact with the victim. It should not be up to the victim to take action, the authorities should take the initiative in investigating and prosecuting the offender. This Report provides evidence to support its recommendations, which call for the effective investigation and prosecution of offenders. The recommendations must be implemented to ensure compliance with international standards.

Conclusions

I started by making a direct link between the recommendations in this Report and full compliance with the human rights standards that Thailand has agreed to observe under CEDAW and other international instruments.

The main requirements needed to secure equality and non-discrimination in accordance with those standards are these:

Commitment at all levels of government, the executive and administrative branches. Commitment by political leaders and Parliamentarians. Commitment by the judiciary , tribunals, law enforcement officers and the legal profession.

Next, there must be a framework of **legislation**, laws, prohibiting discrimination in all its forms and providing for sanctions, penalties and remedies which are readily accessible.

A third element is the need to set up well resourced **agencies**, institutions and programs

To oversee and manage implementation of the legislation

To educate and train responsible authorities

To inform and educate the community about rights and remedies

To facilitate access to remedies by victims

To ensure that penalties are imposed on perpetrators.

That is what international standards call for and what the treaty bodies have recommended.

Some years back, when I was a member of CEDAW and of the Human Rights Committee, we used to say that the work of the treaty bodies in examining States and assessing what they needed to do to comply with their obligations did not end in Geneva. The recommendations of the Committees had to be taken home by the Government and by civil society, by NGOs, women's groups and individuals who could keep the issues on the table and press for the reforms needed.

This Report is an excellent example of such work. It has been produced by co-operation between two NGOs, JPF and ICJ, and shows in detail the steps that should be taken to ensure the more effective realisation of equality and non-discrimination and to overcome the obstacles to justice which impede progress for so many women in Thailand.

